

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

PUTNEY, INC.,	)	
	)	
Plaintiff/Counterclaim-Defendant,	)	
	)	
v.	)	Civil Docket No. 2:07-cv-00108-DBH
	)	
PFIZER INC.,	)	<b>CONSENT DECREE</b>
	)	
Defendant/Counterclaim-Plaintiff,	)	
	)	
and	)	
	)	
MWI VETERINARY SUPPLY, INC.,	)	
	)	
Defendant.	)	
	)	

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WHEREAS the Court has personal jurisdiction over the parties and has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338, for the claims arising in connection with the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and for the claims arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and pursuant to 28 U.S.C. §§ 1338(b) and 1367, for the claims arising under Maine statutory and common law, and venue is properly laid in this judicial district pursuant to 28 U.S.C. § 1391;

WHEREAS, on April 11, 2008, Putney Inc. (“Putney”) and defendant MWI Veterinary Supply, Inc. (“MWI”) filed a notice of dismissal of Putney claims against MWI in this action;

WHEREAS plaintiff and counterclaim-defendant Putney and defendant and counterclaim-plaintiff Pfizer Inc. (“Pfizer”) have agreed to settle this action by entry of this Consent Decree; and

WHEREAS neither Putney nor Pfizer acknowledges the validity of the contentions or claims of the other party in this action or any liability associated therewith;

IT IS HEREBY STIPULATED, AGREED AND ORDERED:

1. Subject to the provisions of Paragraphs 2 and 3 of this Consent Decree, Putney and its officers, agents, servants, employees, subsidiaries and affiliates shall not:

(a) distribute, post on Putney's website or in any way otherwise use the brochure, a copy of which is attached as Exhibit 1 hereto ("Brochure");

(b) state or represent, orally or in writing, directly or by implication, that (i) any of Putney's human-approved cefpodoxime proxetil products (including, but not limited to, its 100 mg and 200 mg cefpodoxime proxetil tablets) (individually and collectively, the "Putney Product" or "Putney's Product") is approved by the United States Food and Drug Administration ("FDA") for use in dogs or other animals, (ii) the FDA has approved Putney's Product as the generic equivalent of, or bioequivalent to, Pfizer's SIMPLICEF® product, (iii) Putney's Product is the generic equivalent of, or bioequivalent to, Pfizer's SIMPLICEF® product, (iv) Putney's Product is "generic SIMPLICEF®," or (v) Putney is authorized by the FDA to advertise, market or promote the Putney Product for use in dogs or other animals; or

(c) offer to sell, or continue to sell, the Putney Product to any distributor or other reseller of the Putney Product whom Putney knows or has reason to know is engaging in any of the following activities after the entry date of this Consent Decree: making any representations, either orally or in writing, that (1) the Putney Product (i) is approved by the FDA for use in dogs or other animals, (ii) is approved by the FDA as the generic equivalent of, or bioequivalent to, Pfizer's SIMPLICEF® product, (iii) is the

generic equivalent of, or bioequivalent to, Pfizer's SIMPLICEF® product, or (iv) is "generic SIMPLICEF®," or (2) Putney has been authorized by the FDA to advertise, market or promote the Putney Product for use in dogs or other animals; or

(d) describe, orally or in writing, to distributors, veterinarians or veterinary practices use of the Putney Product in dogs or other animals; and shall not offer to sell, or continue to sell, the Putney Product to any distributor or other reseller of the Product whom Putney knows or has reason to know is describing to veterinarians or veterinary practices use of the Putney Product in dogs or other animals.

2. The provisions of Paragraph (1)(a)-(d) above do not prohibit the listing of the Putney Product in price lists and catalogs distributed to veterinarians or veterinary practices. Any listing may state the name of the Product, its NDC or other identifying number, the Product price, as well as contact information for Putney and/or a distributor of the Product. Any such listing also may state that the Product is approved for use in humans.

3. The provisions of this Consent Decree do not prohibit the sale or distribution of the Putney Product to distributors, veterinary practices or veterinarians, subject to the limitations of this Consent Decree.

4. Within twenty (20) business days of entry of this Consent Decree, Putney shall (i) place a prominent affirmative statement on its web site and in its Brochure that the FDA has not approved the Putney Product for use in dogs or other animals, and (ii) send a written notification to each of its distributors and each veterinarian to whom it or its distributors have distributed its Brochure or any other document containing the statements made in the Brochure that is the subject of this action (or to whom such statements were made orally), to the extent that

any such distributor or veterinarian can be reasonably identified by Putney, stating that the FDA has not approved the Putney Product for use in dogs or other animals.

5. Within five (5) business days of entry of this Consent Decree, Putney shall provide a copy of this Consent Decree to each of its present distributors and, within five (5) business days of entering into a distributorship arrangement with any future distributor, to each such future distributor.

6. By agreeing to the terms of this Consent Decree, Putney in no way agrees or concedes that it owns or controls any of its distributors, which are independently owned and operated entities. Pfizer agrees that nothing in this Consent Decree may be construed to obligate Putney to violate any antitrust laws, including but not limited to 15 U.S.C. § 1 *et seq.*

7. Any notice to the parties under this Consent Decree shall be sent by certified mail or overnight next day courier service, return receipt requested, as follows:

<u>Putney</u>	<u>Pfizer</u>
Jean Hoffman President and Chief Executive Officer Putney, Inc. 400 Congress Street Suite 200 Portland, ME 04101	Lisa Brenner, Esq. Assistant General Counsel Pfizer Inc. 235 East 42 <sup>nd</sup> Street 150/2/39 New York, NY 10017-5755
and	and
William A. Rakoczy, Esq. Rakoczy Molino Mazzochi Siwik LLP 6 West Hubbard Street Suite 500 Chicago, IL 60610	Thomas A. Smart, Esq. Kaye Scholer LLP 425 Park Avenue New York, NY 10022-3598

8. Without affecting the right of Pfizer to seek enforcement for any alleged violation of this Consent Decree, all claims that were asserted by Pfizer in this action, and all

claims asserted by Putney in this action, are hereby dismissed with prejudice and without attorneys' fees or costs to any party.

9. The Court retains jurisdiction over this action and the parties hereto for the purpose of enforcement of this Consent Decree.

Dated: July 10, 2008

PERKINS THOMPSON, P.A.

NORMAN, HANSON & DeTROY, LLC

By /s/ John A. Ciraldo  
John A. Ciraldo

By /s/ Russell B. Pierce  
Russell B. Pierce

One Canal Plaza  
P.O. Box 426  
Portland, ME 04112-0426  
(207) 774-2635  
jciraldo@perkinsthompson.com

415 Congress Street  
P.O. Box 4600  
Portland, ME 04112-4600  
rpierce@nhdlaw.com

RAKOCZY MOLINO MAZZOCHI  
SIWIK LLP

KAYE SCHOLER LLP

By /s/ Amy D. Brody  
Amy D. Brody

By /s/ Thomas A. Smart  
Thomas A. Smart

6 West Hubbard Street, Suite 500  
Chicago, IL 60610  
(312) 222-6344  
abrody@rmmslegal.com

425 Park Avenue  
New York, NY 10022-3598  
(212) 836-8000  
tsmart@kayescholer.com

*Attorneys for Plaintiff and Counterclaim-  
Defendant Putney, Inc.*

*Attorneys for Defendant and Counterclaim-  
Plaintiff Pfizer Inc.*

Dated: July 10, 2008

SO ORDERED:

/s/ D. Brock Hornby  
The Honorable D. Brock Hornby  
United States District Judge